

DECLARATION OF JULIA MCKEOWN

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

DALE FOLWELL, in his official capacity as
State Treasurer of North Carolina, *et al.*,

Defendants.

No. 1:19-cv-00272-LCB-LPA

**DECLARATION OF JULIA
MCKEOWN**

I, Julia McKeown, hereby state as follows:

1. I am a plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.
2. I am a 45-year-old transgender woman. I am employed by North Carolina State University (“NCSU”). I live in Apex, North Carolina.
3. I was designated male at birth, but my gender identity is female. I live in accordance with my female gender identity in all aspects of my life.
4. I have struggled with gender dysphoria since childhood. I had to suppress my gender identity for much of my early life into adulthood. I was first diagnosed with what was then called gender identity disorder in my mid-teens.
5. I grew up and went to school in Florida. During my time in Florida, I completed my higher education, including a bachelor’s degree, two master’s degrees, and a doctoral degree. During this time, I was also battling severe, untreated gender dysphoria.

While I presented as female in my personal life starting in college, I did not present as female in my professional life for fear that I would experience discrimination.

6. After completing my doctorate, I reached the point where I could no longer suppress who I really was. I made the life-saving decision to live authentically, in accordance with my gender identity, in all aspects of life. Between 2010 and 2016, I was progressing in my career, life, and transition.

7. In 2016, I accepted a position with NCSU and moved to North Carolina from Florida. Since 2016, I have been employed by NCSU as an Assistant Professor in the Teaching Education and Learning Design Department of the NCSU College of Education. I currently teach in the Learning, Design, and Technology Program. I also serve as the Graduate Coordinator for the Learning, Design, and Technology Program.

8. As a North Carolina state employee, I am enrolled in the North Carolina State Health Plan for Teachers and State Employees (“NCSHP”), and receive health care benefits from this plan as part of my compensation. I contribute each month to the plan via a paycheck deduction. I pay the same amount for this coverage as other employees, even though I receive inferior coverage because of the exclusion for gender-affirming care.

9. Once I moved to North Carolina, I started the medical part of my transition. While hormone therapy and social transition have been important aspects of my transition, I was still dealing with significant distress related to gender dysphoria. By 2018, my medical provider referred me for vaginoplasty, as part of treatment for my gender

dysphoria. After consulting with a surgeon, my surgeon and I requested preauthorization for vaginoplasty on or around July 19, 2018.

10. On or around July 23, 2018, the preauthorization was denied because of the reinstatement of the Exclusion of gender-confirming health care in the NCSHP. A true and correct copy of that notice of denial is attached as Exhibit A. Specifically, the notice from Blue Cross and Blue Shield of North Carolina (“BCBSNC”) indicated my preauthorization was denied due to an exclusion in the policy, which stated, “Treatment or studies to or in connection with sex changes or modifications and related care.” Exhibit A at 2 (KADEL00312897).

11. I appealed that decision to BCBSNC but was informed that they only administer the plan and could not resolve the issue. I also filed a grievance with the NCSHP Section 1557 Coordinator after the denial of preauthorization on or around August 13, 2018. Exhibit A at 1 (KADEL00312896). The grievance was denied on or around September 12, 2018. A true and correct copy of that denial is attached as Exhibit B (KADEL00311967).

12. At that point in my life, I could no longer wait for surgery. Left with no other options, I made the difficult decision to withdraw funds from my retirement and savings accounts, in order to pay for my medically necessary surgery. The surgery was life-changing. I felt like my physical body was finally aligned with who I really was, and I was able to live a more authentic, fulfilling life. The relief the surgery provided me from my gender dysphoria was critical for my wellbeing.

13. As part of my treatment for gender dysphoria, I was also prescribed hormone therapy, which is excluded under the NCSHP. My cost of gender affirming care that was not covered by insurance exceeded \$13,000.00.

14. The Exclusion also prohibits me from seeking future medically necessary gender-confirming health care, such as ongoing hormone therapy and additional surgery I may need, such as a mammoplasty.

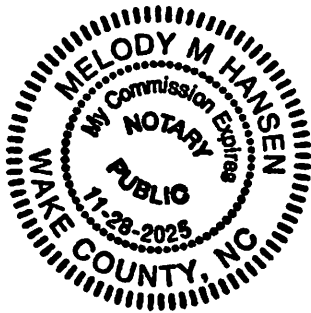
I declare under the penalty of perjury that the foregoing is true and correct.

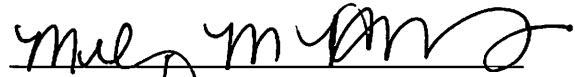
DATED: 11/19/2021


Julia McKeown

Subscribed and sworn before me, a Notary Public in and for the _____,

State of North Carolina, this 19 day of November, 2021.




Signature of Notary



CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

Dated: November 30, 2021

/s/ Amy E. Richardson
Amy E. Richardson
N.C. State Bar No. 28768
HARRIS, WILTSHIRE & GRANNIS LLP
1033 Wade Avenue, Suite 100
Raleigh, NC 27605-1155
Telephone: 919-429-7386
Facsimile: 202-730-1301
arichardson@hwglaw.com

Counsel for Plaintiffs

Exhibit A

Julia McKeown

August 12th, 2018

Chris Almberg
Compliance Officer and Section 1557 Coordinator
North Carolina State Health Plan
3200 Atlantic Avenue
Raleigh, NC 27604

RE: Grievance for Discrimination: Benefits Denial and exclusions based on sex.

Dear Chris Almberg:

As the designated coordinator for Grievances involving discrimination for the North Carolina State Health Plan, please accept this letter as my formal letter of complaint regarding denial of benefits (pre-authorization) of a medically necessary and documented surgical procedure.

On July, 23rd, 2018 I received a letter from Blue Cross Blue Shield indicating an adverse benefit determination for pre-authorization for surgery. I have attached a copy of this letter, which also includes the case and reference number, as well as my insurance ID number. The letter indicated that I was denied due to an exclusion in the policy which stated, "*Treatment or studies to or in connection with sex changes or modifications and related care*". Citing this inclusion for my procedure is in clear violation of several federal laws and as cited seems to be completely based on sex. I reviewed the surgery code and determined that the code was correct as submitted: 55970, Intersex Surgery.

I filed a complaint with BCBSNC and they indicated that since they only service the plan for the state that my complaint must be directed to the NC State Health Plan, which is the purpose of this letter.

My desired remedy is simply to have the State Health Plan and by extension BCBSNC approve and pay for these medically necessary procedures according to my schedule of benefits. To exclude these necessary procedures based on my medical situation is nothing less than a discriminatory action specifically targeting me and denying benefits based on my sex. I do hope this issue can be resolved amicably. Should you need additional information, please let me know. I give permission, to the extent required to address this grievance, to access to my health insurance information, and specifically the documents that were submitted as part of this claim, which includes documentation from three medical professionals regarding these surgical procedures.

Sincerely,
Julia McKeown

BlueCross BlueShield of North Carolina
Healthcare Management and Operations
P.O. Box 2291
Durham, NC 27702

Telephone Number: 800-672-7897
Fax Number: 800-672-6587
Website: WWW.BCBSNC.COM

JULIA MCKEOWN
[REDACTED]

Date of Notice: July 23, 2018

This document contains important information that you should retain for your records.

This document serves as notice of an adverse benefit determination. We have declined to provide benefits, in whole or in part, for the requested treatment or service described below. If you think this determination was made in error, you have the right to appeal (see the enclosures to this letter for information about your appeal rights.)

Case Details:

Member/Patient Name: JULIA MCKEOWN
ID Number: [REDACTED]

Provider: KEELEE MACPHEE, MD
Facility: NORTH CAROLINA SPECIALTY HOSPITAL
Service: Surgical Stay
Date(s) of Service: 9/18/2018 - 9/19/2018
Service: INTERSEX SURGERY; MALE TO FEMALE
Date(s) of Service: 9/18/2018 - 9/19/2018

Reference #: 112412394

Reason for Denial: The requested service is not a covered benefit per your benefit booklet or plan documents.

Explanation of Basis for Determination:

The following is not a covered benefit: Treatment or studies to or in connection with sex changes or modifications and related care.

Sincerely,

Healthcare Management and Operations

cc: KEELEE MACPHEE, MD
cc: NORTH CAROLINA SPECIALTY HOSPITAL

Exhibit B



Chris Almborg
Compliance Officer
North Carolina State Health Plan
3200 Atlantic Avenue
Raleigh, NC 27604

September 12, 2018

Julia McKeown


Ms. McKeown,

On August 13, 2018, you submitted a grievance letter by email pursuant to the North Carolina Department of State Treasurer (Department) policy, "Section 1557 Grievance Procedure." In this letter, you alleged that the basis for denying a benefit to you was your sex, and requested that the North Carolina State Health Plan (Plan) approve and pay for the denied benefit.

As required by Department policy, I, in my role as 1557 Coordinator for the Department, have conducted a thorough investigation of your complaint. This letter should be considered my formal written decision on your grievance, based on a preponderance of the evidence.

Section 135-48.30 of the North Carolina General Statutes delineates the powers and duties of the State Treasurer with regards to the Plan. It states, in part, that the Treasurer has the power and duty to set benefits for the Plan. N.C.G.S. § 135-48.30(a)(2). The Board of Trustees of the State Health Plan (the Board) has the power and duty to, "Approve benefit programs, as provided in § 135-48.30(a)(2)." N.C.G.S. § 135-48.22. These powers and duties outlined by statute allow the Treasurer, with approval of the Board, to set benefits for the Plan. Setting benefits for the Plan, by nature, includes the power to exclude benefits from coverage. Any benefit excluded from coverage will not be preauthorized by or paid for by the Plan.

On December 2, 2016, the Board voted in favor of covering the treatment of gender dysphoria, including treatment or studies regarding sex changes or modifications, psychological assessments, and psychotherapy treatment, for the 2017 plan year only.

To date, the Board has not voted on whether to cover these items beyond December 31, 2017. Therefore, treatment or studies to or in connection with sex changes or modifications and related care are not covered benefits for the 2018 plan year. These exclusions are listed in the 2018 Benefit Booklet, which was provided to all members in 2017. These exclusions are applied consistently to all Plan members.

You and your medical providers submitted a preauthorization request for intersex surgery; male to female, to the Plan's third party administrator, BlueCross BlueShield of North Carolina (BCBSNC), on or about July 19, 2018 with dates of service of September 18-19, 2018. The preauthorization request was denied because, per the 2018 Benefit Booklet, the requested service is not a covered benefit. You and your providers were informed of this denial by a notice of adverse benefit determination sent by BCBSNC dated July 23, 2018.

Title IX states that no person shall be subjected to discrimination on the basis of sex under any education program or activity receiving Federal financial assistance. Section 1557 of the Affordable Care Act applies the Title IX prohibition on sex discrimination to health programs or activities that receive federal financial assistance. The United States Courts of Appeal do not agree

about whether gender identity is included in the definition of sex in the Title IX context. Some courts have determined that the term "sex" as used in Title IX and its implementing regulations is ambiguous. Other courts have determined found that the plain language definition of "sex" in Title IX is clear and unambiguous. In addition, an injunction set forth by the United States District Court in Texas prohibits the United States Department of Health and Human Services (HHS) from promulgating rules that include gender identity within the definition of sex discrimination.

As a result, based upon all available information, I cannot conclude that excluding treatment of gender dysphoria, including treatment or studies regarding sex changes or modifications, psychological assessments and psychotherapy treatment as a covered benefit is discrimination on the grounds of sex in this case.

If you wish to appeal this decision, you may do so by writing to the Executive Administrator of the State Health Plan within 15 days of receiving this decision. The Executive Administrator shall issue a written decision in response to the appeal no later than 30 days after its filing. If you wish to appeal this decision, please address your appeal as follows:

Dee Jones, Executive Administrator
North Carolina State Health Plan
Department of State Treasurer
3200 Atlantic Avenue
Raleigh, NC 27604

The availability and use of this grievance procedure does not prevent you from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, sex, age, or disability in court or with the U.S. Department of Health and Human Services, Office for Civil Rights.

You can file a complaint of discrimination electronically through the Office for Civil Rights Complaint Portal, which is available at: <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>

Or by mail at:

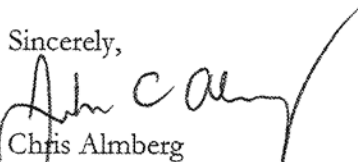
U.S. Department of Health and Human Services
200 Independence Avenue SW.
Room 509F, HHH Building
Washington, DC 20201

Or by phone: 1-800-368-1019

Complaint forms are available at: <http://www.hhs.gov/ocr/office/file/index.html>.

Such complaints must be filed within 180 days of the date of the alleged discrimination.

Sincerely,



Chris Almberg
North Carolina State Health Plan
Compliance Officer